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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 87, AFL-CIO, **Plaintiff and Respondent,** **v.** **DAN SIEGEL,** **Defendant and Appellant.**	**A104959** **(San Francisco County Super. Ct. No. CGC-02-411758)**

Defendant Dan Siegel (Siegel),[1] appeals a judgment following court trial in favor of plaintiff Service Employees International Union, Local 87, AFL-CIO (hereafter Local 87), in Local 87's action for an accounting and recovery of attorney fees it paid to Siegel pursuant to a retainer agreement. Siegel contends the trial court erroneously ruled that (1) the retainer agreement failed to comply with Business and Professions Code section 6148; and (2) his law firm, Siegel & Yee, was not entitled to the reasonable value of its services. We reject these contentions and affirm.

[1] The complaint, judgment and notice of appeal state that Siegel is the defendant, while the statement of decision states that the defendant is Siegel's law firm, Siegel & Yee.

BACKGROUND

Local 87 is a union with approximately 3000 members and is chartered by the Service Employees International Union (SEIU) (hereafter international union.) In the fall of 2001, the international union planned to impose a trusteeship on Local 87 due to its officers' refusal to follow the international union's recommendation that Local 87 merge with another SEIU local union. Siegel met with officers of Local 87 to discuss Siegel & Yee's assisting Local 87 in this dispute.

On November 30, 2001, Siegel & Yee and Local 87 entered into a written retainer agreement for legal services provided by Siegel & Yee from September 1, 2001, through January 31, 2002, in exchange for Local 87's payment of a $50,000 "non-refundable retainer." The written retainer agreement included the following: "This non-refundable retainer will be used to pay for the legal services performed by our firm on behalf of Local 87 to date, as well as related out-of-pocket costs to date. In addition, this non-refundable retainer will secure our on-call legal representation of Local 87 through January 31, 2002. In exchange for our willingness to provide any legal representation needed by SEIU Local 87 from this date through January 31, 2002, this non-refundable retainer is earned when paid. [Legal] services shall include research, counseling, and the preparation and filing of legal documents if requested by Local 87. This non-refundable retainer is <u>not</u> an advance payment for future legal services performed by Siegel & Yee on behalf of Local 87." (Underscoring in original.) The same day Local 87 paid Siegel & Yee the $50,000 retainer fee.

According to Siegel, the retainer agreement was so structured because of the concern "that if we began to litigate the trusteeship on a typical hourly rate basis or a fee for service basis, that the international union would . . . come in, take over [Local 87] and take over the treasury of [Local 87] and prevent it from continuing to compensate my law firm for Local 87's representation in litigation against the merger and trusteeship. [¶] So the [retainer] agreement was structured . . . simply as a defensive means to ensure [that] Local 87 could continue to litigate to a decision of the district court the legality of the international union's actions." It was orally agreed that Siegel & Yee would keep track

of their hours at their normal hourly rates and refund any unused portion of the $50,000 retainer.

On January 27, 2002, the international union's president imposed an emergency trusteeship on Local 87. Pursuant to the emergency trusteeship order, Local 87's elected officers were ordered removed from office, and Eliseo Medina and Michael Baratz were appointed, respectively, trustee and deputy trustee to manage the affairs of Local 87 under the auspices of the international union.

The next day, Medina informed Local 87's three full-time officers of their removal, directed them not to conduct any business on behalf of Local 87 or the international union, and directed them to turn over all money, books, files and property of Local 87. Also that day Medina wrote a letter to Siegel & Yee stating, in relevant part: "Local 87 was placed in trusteeship this morning. This is to notify you that your firm is not authorized to provide any legal services on behalf of Local 87 without prior authorization. [¶] I am aware that a $50,000 check was issued by Local 87 to your firm on November 30, 2001. Please contact . . . my counsel about the nature of the work that was covered by this or any other outstanding retainer." Siegel & Yee received Medina's letter.

On January 29, 2002, Siegel & Yee filed a class action complaint in federal district court on behalf of Local 87, its elected officers, executive board members, trustees, and rank and file members against the international union challenging the trusteeship and the merger. The international union filed a counterclaim contending that Local 87's former directors and executive board members breached their fiduciary duty by paying the $50,000 nonrefundable retainer to Siegel & Yee.

In March 2002, while the federal action was pending, Siegel sent a letter to the attorney for the international union asserting a "formal request" that the international union honor the January 2002 vote by Local 87's general membership approving

severance packages for three former Local 87 officers who were removed because of their refusal to recommend the merger of Local 87.[2]

In April and May 2002, Attorney Noreen Farrell, an associate of Siegel & Yee, filed 15 petitions with the National Labor Relations Board seeking to decertify Local 87 as the bargaining unit for certain janitorial employees. Farrell also filed petitions to vacate the union security clause requiring employees to join the union.

In September 2002, the federal district court upheld the international union's decision to merge Local 87 into Local 1877 and the imposition of the trusteeship. In August 2003, the federal district court rejected the international union's claim for breach of fiduciary duty.

The Instant Action

In August 2002, after imposition of the trusteeship and while the federal case was pending, Local 87 filed the instant action against Siegel, individually, for an accounting of his expenses pursuant to the retainer agreement and the return of any amount unexpended. Siegel filed an answer on behalf of Siegel & Yee, asserting, in part, that Local 87 was seeking to undermine the litigation strategy of the plaintiffs in the district court action by forcing them to disclose information protected by the attorney-client privilege.

In response to the demand for an accounting, Siegel & Yee submitted time and expense records in the federal action for legal services rendered by Farrell between November 2001 and February 2003, and by Siegel between November 2001 and September 2002. The parties stipulated that at no time during the federal action did Local 87 move to realign the parties or disqualify Siegel & Yee from representing Local 87.

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[2] We decline Local 87's request that pursuant to Evidence Code sections 452 and 459 we judicially notice the file in a writ of mandate proceeding in Division One in which Siegel unsuccessfully sought to set aside an order disqualifying him and Siegel & Yee from further representation of former officers of Local 87 in litigation against the international union for severance pay. Local 87 seeks this evidence to support an alternative basis for affirming the judgment, i.e., that the retainer agreement is unconscionable as a matter of law.

Siegel testified that as a result, he continued to represent Local 87 in the federal action to its conclusion, and once the federal court upheld the trusteeship, Siegel & Yee determined it could no longer represent Local 87. Siegel testified that using Siegel & Yee's lowest hourly rates, the attorney fees incurred in representing Local 87 in the federal action amounted to approximately $67,000.

Statement of Decision

The trial court's statement of decision initially referred to defendant as "Siegel & Yee," which it thereafter designated as "Siegel."[3]

The court determined that the retainer agreement was not unconscionable, stating, "While in writing Siegel [& Yee] appears to promise nothing, it was orally agreed that [it] would provide legal services at [its] normal hourly rate, and if [it] provided no services, 'the money would be refunded to Local 87.' " In addition, the court found the retainer agreement did not result from overbearing conduct by Siegel [& Yee]. The court found that Local 87's 15-member executive board were "long standing members and officers of the union and presumably experienced in the realm of union business affairs. It gave its informed consent after a two-hour meeting. Accordingly, the court concludes that the agreement was not unconscionable."

The court did conclude that the retainer agreement was voidable for failing to comply with Business and Professions Code[4] section 6148. In particular, the court found that the written retainer agreement did not contain the basis of compensation (§ 6148, subd. (a)(1)), but merely provided for a lump sum retainer in connection with unspecified legal services. It also found that the retainer agreement failed to describe Siegel & Yee's responsibilities, and it was "unclear from the face of the writing whether Siegel [& Yee had] any responsibilities at all." The court also found that Local 87 properly exercised its power to void the noncomplying retainer agreement through its letter of January 28,

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[3] For purposes of clarity, all references in the trial court's statement of decision to "Siegel" will be referred to by this court as "Siegel & Yee."

[4] All undesignated section references are to the Business and Professions Code.

2002, and was entitled to restitution of the $50,000 paid minus a reasonable fee for the services Siegel & Yee performed prior to termination of its legal services.

The court found that Siegel & Yee's uncontested accounting of work performed prior to its removal on January 28, 2002, as counsel for Local 87 entitled it to attorney fees of $15,319. However, the court concluded that Siegel & Yee was not entitled to recover a fee for legal services performed after that date. The court concluded that Siegel & Yee must return to Local 87 the unused portion of the $50,000 retainer in the amount of $34,681. The court's judgment, which Siegel approved as to form, denoted the defendant as "Dan Siegel" and ordered him to pay Local 87 the sum of $34,681 plus costs.

DISCUSSION

I. *Siegel has abandoned his claim that the judgment was erroneously issued against him personally.*

In his opening brief, Siegel contends the court's finding that he personally entered into the retainer agreement is not supported by substantial evidence and therefore the court erred in entering judgment against him personally. He concedes, however, that he may be held liable for the partnership debts of Siegel & Yee pursuant to the retainer agreement under Corporations Code section 16306, subdivision (a). In a footnote in his reply brief, Siegel states that although his opening brief argued that the court erred in entering judgment against him personally, he "did not list this issue among those presented for this court's resolution because it does not affect the outcome of this case," since he personally may be held liable for Siegel & Yee's partnership debts.

We construe the statement in Siegel's reply brief to be an abandonment of this issue. (See *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Sanchez-Scott v. Alza Pharmaceuticals* (2001) 86 Cal.App.4th 365, 368, fn. 1.) However, the parties are free to seek correction of the judgment following the issuance of this court's remittitur.

II. *The retainer agreement failed to comply with section 6148, subdivision (a)(1).*

Siegel contends the court erred in ruling that the written retainer agreement was voidable because it failed to comply with section 6148, subdivision (a)(1) and (3).

Section 6148, subdivision (a) provides, in relevant part: "In any case not coming within Section 6147 [(contingency fee contracts)] in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars ($1,000), the contract for services in the case shall be in writing. . . . The written contract shall contain all of the following: [¶] (1) Any basis of compensation, including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case. [¶] (2) The general nature of the legal services to be provided to the client. [¶] (3) The respective responsibilities of the attorney and the client as to the performance of the contract." Subdivision (c) provides: "Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee."

Attorney fee agreements must be evaluated as of the time they are made, and must be fair, reasonable, fully explained to and understood by the client. Such contracts are strictly construed against the attorney. (*Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, 1037.) The Legislature enacted section 6148 and other statutes specifically delineating the required contents of various kinds of attorney fee agreements in order to protect clients and assure that fee agreements are fair and understood by clients. (See §§ 6146-6148.) Section 6148 "operate[s] to ensure that clients are informed of and agree to the terms by which the attorneys who represent them will be compensated." (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 460.)

Siegel first argues that the retainer agreement sufficiently specified the basis of compensation required by section 6148, subdivision (a)(1) (hereafter section 6148(a)(1)) as "a non-refundable retainer of $50,000." He asserts that this established a "flat fee" that section 6148 expressly states may constitute a basis of compensation, and no indication of hourly or other rates was required. Siegel argues that the retainer agreement

here provided for a classic retainer fee arrangement, defined as "[A] sum of money paid by a client to secure an attorney's availability over a given period of time. Thus, such a fee is earned by the attorney when paid since the attorney is entitled to the money regardless of whether he actually performs any services for the client." (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4; accord, *S.E.C. v. Interlink Data Network of Los Angeles* (9th Cir. 1996) 77 F.3d 1201, 1205 & fn. 3 [contrasting retainer fee and advance fee arrangements].)

Second, Siegel argues that the retainer agreement did sufficiently specify the general nature of the legal services to be provided by stating: "the legal services performed by our firm on behalf of Local 87 to date, as well as related out-of-pocket costs to date," "on-call legal representation of Local 87 through January 31, 2002," "any legal representation needed by [Local 87] from this date through January 31, 2002," and "research, counseling, and the preparation and filing of legal documents if requested by Local 87."

Finally, while acknowledging that the district court's ruling was "not precisely on point," Siegel relies on a portion of that court's order as establishing the context in which the retainer agreement was made: "Here, there was a fair risk that if the merger was effectuated or a trusteeship was imposed, the law firm hired would not be paid. Thus, it made sense that Siegel & Yee suggested a lump-sum retainer and that plaintiffs agreed to such. The retainer agreement offered by Siegel & Yee also eliminated the risk of runaway legal expenses. Accordingly, this order finds that plaintiffs' non-refundable, one-time payment of $50,000 to secure 24-7 legal representation to help protect their very existence was a sound judgment subject to protection under the business judgment rule."

In this case, the trial court's application of a statutory standard to undisputed facts is reviewed de novo. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611-612.) Applying that standard, we conclude the court properly determined that the retainer agreement failed to comply with section 6148(a)(1).

Contrary to Siegel's contention, the statement in the retainer agreement "Local 87 agrees to pay Siegel & Yee a non-refundable retainer of $50,000" does not provide an

adequate basis of compensation. Instead, it merely provides for a lump sum nonrefundable payment of $50,000 by Local 87. Although the written retainer agreement states that the $50,000 retainer was nonrefundable, and Siegel asserts that it was a "flat fee" retainer, Siegel testified at the time the retainer agreement was executed the parties understood that Siegel & Yee would keep track of their hours and hourly rates, and any unearned portion of the $50,000 would be refunded to Local 87 if the firm did not perform $50,000 worth of services. This conflict between the written retainer agreement and the oral understanding of the parties regarding their fee arrangement establishes that the written retainer agreement did not adequately or accurately include the basis of compensation under section 6148(a)(1).

Moreover, as the trial court found, *Baranowski* did not pertain to, much less nullify the requirements of section 6148. *Baranowski* concerned whether an attorney violated California Rules of Professional Conduct, rule 8-101 (now rule 4-100) by failing to deposit funds received from clients in client trust accounts. (*Baranowski v. State Bar*, *supra*, 24 Cal.3d at pp. 163-164.) The issue concerned, in part, whether the funds were received from clients as an "advance fee payment" or a "classic 'retainer fee' arrangement." The Supreme Court resolved the rule violation issue on other grounds. (*Id.* at p. 164 & fn. 4.) Likewise, the district court's decision in the federal action concerned whether the officers of Local 87 breached their fiduciary duty by agreeing to pay Siegel & Yee a nonrefundable retainer which was excessive. It did not address whether the retainer agreement satisfied the requirements of section 6148.

We conclude the court properly determined that the retainer agreement failed to comply with the requirements of section 6148(a)(1).[5]

III. *The retainer agreement was voided by the trustee on behalf of Local 87.*

Next, Siegel contends, with no citation to authority, that even if the retainer agreement was voidable, it was not voided by Local 87. Instead, he argues that the

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[5] Even assuming the retainer agreement satisfied the remaining requirements under section 6148, Siegel & Yee's failure to comply with section 6148(a)(1) rendered the retainer agreement voidable by Local 87. (§ 6148, subd. (c).)

international union acquiesced in Siegel & Yee's representation of Local 87 in the federal action by failing to seek removal of Local 87 as a plaintiff, realignment of Local 87 as a defendant or disqualification of Siegel & Yee as Local 87's counsel.[6] Finally he argues that the January 28, 2002 letter from trustee Medina to Siegel & Yee was ambiguous and did not purport to invalidate the authorization previously given to proceed with the federal litigation.

Siegel does not take issue with that portion of the statement of decision stating that title 29 United States Code section 464(c), the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) (29 U.S.C. § 401 et seq.), provides a *presumption of validity* to union trusteeships established under the procedures of a union's bylaws (*Higgins v. Harden* (9th Cir. 1981) 644 F.2d 1348, 1351), and that the trusteeship in this case must be presumed valid as of its establishment on January 27, 2002. Moreover, Siegel does not take issue with the court's statement that pursuant to a union trusteeship, a trustee has the power to "freeze" the assets of a local union. (See *Local U. 13410, United Mine Wkrs. v. United Mine Wkrs.* (D.D.C. 1971) 325 F.Supp. 1107, 1112-1113, reversed on other grounds (D.C. Cir. 1973) 475 F.2d 906.) The court found that trustee Medina, in his January 28, 2002 letter to Siegel & Yee in essence froze the assets of Local 87 by instructing Siegel & Yee to stop work.

Siegel's claim that Medina's letter did not unambiguously purport to revoke Siegel & Yee's authority to continue to provide services that had been previously authorized lacks merit. Where, as here, no conflicting extrinsic evidence was presented regarding the meaning of a writing, we interpret the writing de novo. (See, e.g., *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439-1440; *Wells Fargo Bank v. Marshall* (1993) 20 Cal.App.4th 447, 452-453.)

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6 Local 87 argues that its failure to seek to disqualify Siegel & Yee as its counsel or to realign as a defendant in the federal action would have had no effect on that litigation challenging the trusteeship, since the action was properly litigated by the former officers who could properly be represented by Siegel & Yee.

Medina's letter requested Siegel & Yee to contact Medina's counsel "about the nature of the work that was covered by this or any other outstanding retainer." This request together with the direction not to provide any legal services without prior authorization clearly suggests that "prior authorization" does not refer to the pretrusteeship authorization to the law firm to provide legal services. Instead, it conveys that, as of the date of establishment of the trusteeship, all subsequent legal services must be newly authorized.

We also reject Siegel's contention that Local 87 did not void the retainer agreement because its elected officers pursued the federal action to its conclusion in September 2002. Immediately upon establishment of the trusteeship, Local 87's elected officers were removed and were no longer authorized to act (or litigate) on behalf of Local 87. While those officers could and did, as individuals, pursue the federal action, Siegel testified that he never charged them a fee for representing them in the federal action. The retainer agreement was with Local 87 and, upon the establishment of the trusteeship on January 28, 2002, the trustees voided that agreement and expressly informed Siegel and Yee to provide no legal services on behalf of Local 87 without prior authorization. Consequently, we reject Siegel's claim that the retainer agreement was not voided.

IV. *Siegel & Yee is not entitled to a fee for services performed after January 28, 2002.*

Finally, Siegel contends the court erred in ruling that Siegel & Yee was only entitled to a reasonable fee for the services he performed through January 28, 2002, which were indisputably $15,319. Siegel argues that, notwithstanding Medina's letter, Siegel & Yee continued without "legal objection" by the trustee to represent Local 87 in the federal action through September 18, 2002, for which it should be fairly and reasonably compensated in quantum meruit, even if the retainer agreement was voidable or had been voided. Siegel asserts that only the federal district court could relieve Siegel & Yee from its responsibility to represent Local 87 in the federal action, and by failing to move to dismiss the case as to Local 87, to realign Local 87 as a defendant or to seek

substitute counsel for Local 87, the trustee waived any claim that Siegel & Yee could not continue to represent Local 87 in the federal action.

This argument is meritless. The recent case of *County, Mun. Loc. 1001 v. Laborers' Intern.* (7th Cir. 2004) 365 F.3d 576 (*Local 1001*) is instructive. In that case, an international union imposed a trusteeship on a local union after concluding that the local union's leadership had been infiltrated by organized crime, was engaged in financial mischief and had undermined the local union's democratic processes. (*Id.* at p. 577.) After the trustee assumed control, the law firms that had previously represented the local union filed an action in state court in the name of the local union, rather than the ousted officers. Thereafter, the trustee fired the law firms and directed them to take no further action on behalf of the local union, and the international union removed the lawsuit to federal court on the ground that disputes regarding trusteeships arise under the LMRDA. (*Id*. at pp. 577-578.) Thereafter, purporting to act on behalf of the local union, the law firms filed two motions in federal court: one to remand the action back to state court on the ground that the local union was outside the scope of the LMRDA, the other for a temporary restraining order blocking the trustee from exercising any authority over the local union. The district court denied the motions. (*Id*. at p. 578.)

The Seventh Circuit concluded the "law firms have no business purporting to speak on behalf of Local 1001. Both the notice of appeal . . . and the petition for leave to appeal . . . have been filed against express instructions of the litigant purportedly represented." (*Local 1001, supra,* 365 F.3d at p. 578.) The Seventh Circuit explained that a trustee's powers vest immediately on appointment, and the international union's constitution and the LMRDA, where applicable, permit the trustee to discharge the law firms representing the local union. (*Local 1001*, at p. 578.) The court recognized that the trustee could not prevent the ousted local union's officers from suing in their own names, but the law firms "were no longer authorized to speak for the [local union]." (*Id.* at pp. 578-579.) The Seventh Circuit rejected the law firms' claim that they had a fiduciary duty to the local union and its members that superceded the trustee's instructions. Instead, the court stated that a lawyer who has been discharged has no fiduciary duty to

continue acting on an ex-client's behalf, and must withdraw from the representation as soon as the client so instructs. The court also noted that the law firms had not sued on behalf of any local union member or former officer on a theory that would permit a member to act derivatively on behalf of the local union. (*Id.* at p. 579.)

Siegel cites several cases in support of his argument that he is entitled to recovery in quantum meruit for the services Siegel & Yee provided to Local 87 after January 28, 2002. Each is inapposite because none concerned an attorney who sought compensation for services provided after being discharged by the client. In *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, the court stated, "[W]here services have been rendered under a contract which is unenforceable because not in writing, an action generally will lie upon a common count for quantum meruit. [Citation.]" (*Id*. at p. 996.) In *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, out-of-state attorneys whose retainer agreement was void and unenforceable because it included payment for services rendered in California to a California client, were not barred from seeking compensation in quantum meruit. (*Id*. at p. 135 & fn. 5.) In *Huskinson & Brown v. Wolf, supra,* 32 Cal.4th at pages 457-458, 464, the Supreme Court held that the plaintiff law firm, which had entered into an oral fee-sharing agreement with the defendant law firm without providing written disclosure to or obtaining written consent from the plaintiff law firm's client as required by rule 2-200 of the California Rules of Professional Conduct, could nevertheless recover from the defendant law firm in quantum meruit for the reasonable value of services it rendered to advance the client's case.

The parties agree that Siegel & Yee was authorized to provide and did provide legal services to Local 87 for which it is entitled to reasonable compensation. However, after January 28, 2002, the law firm was on notice that it was no longer authorized to represent Local 87. Siegel & Yee's representation of Local 87's *former officers* challenging the validity of the trusteeship in the federal action was not precluded by the

trusteeship, but it was clearly outside the retainer agreement.[7] Siegel & Yee's ability to "work off" of the $50,000 retainer fee ended on January 28, 2002, after the trusteeship was imposed on Local 87 and the law firm was discharged.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

STEVENS, J.

[7] If the local officers sue to overturn the trusteeship and prevail, they are entitled to recover attorney fees under the LMRDA. (*Hall v. Cole* (1972) 412 U.S. 1, 14; *Higgins v. Harden, supra,* 644 F.2d at p. 1352.) If, as here, they do not prevail then, under the so-called American rule, the officers would be responsible for their own fees. In any event, Siegel does not seek recovery from the officers, but from Local 87, which had discharged him.